IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

WP(C).No. 31680 of 2006(U)

AGAINST THE ORDER DATED 06/03/2006 IN EP.350/2005 IN ARC.415/2005 of MUNSIFF'S COURT, HOSDRUG

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PETITIONER:

T.Y. JOSE THIKKONATH,
S/O. ULAHANNAN, KULINOR, PALAVAYAL EAST
ELERI VILLAGE, HOSDRUG TALUK, KASARAGOD

BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR

RESPONDENT:

THE SECRETARY, NILESHWAR BLOCK
CO-OPERATIVE HOUSING SOCIETY, NILESHWAR P.O.,
HOSDRUG TALUK, KASARAGOD DISTRICT.

BY ADV. SRI.GRASHIOUS KURIAKOSE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.31680/06

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF ORDER IN EP.350/05 IN ARC.415/05 DT.6.3.06 OF MUNSIFF'S COURT, HOSDRUG.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.31680 OF 2006

.....

DATED THIS THE 12th JULY, 2007

J U D G M E N T

Mr.M.Gopikrishnan Nambiar, learned counsel for the petitioner claims that the petitioner has promptly complied with the condition imposed by this Court on 29.11.2006 that a sum of Rs.10,000/- shall be paid within one month, for granting stay.

2. Heard both sides.

3. Mr.M.Gopikrishnan Nambiar submits that the impugned order directing arrest of the petitioner is not preceded by any enquiry as contemplated by Rule 40 of Order XXI C.P.C. and therefore the learned counsel wants me to set aside the impugned order and direct the court below to conduct such an enquiry.

4. Mr.Grashious Kuriakose, learned counsel for the respondent-decree-holder submits that at this distance of time, it may not be proper to order a further enquiry into the matter and the respondent-bank will be inclined to consider any proposal for one-time settlement, if the same is submitted by the petitioner.

5. Having regard to the rival submissions, I am of the view that since Ext.P1 is not preceded by an enquiry into the means of the petitioner and no specific findings are seen entered regarding the

means of the petitioner and the wilful nature of the negligence in the matter of payment, Ext.P1 has to go. I set aside Ext.P1 and direct the court below to conduct an enquiry into the question whether the petitioner is possessed of sufficient means to pay the decree-debt in a lump or in substantial portions. But the same will be only on condition that till such time as the enquiry is completed, the petitioner shall pay every month commencing from 16.8.2007, a sum of Rs.1000/- towards the decree-debt, without prejudice to his contentions. The learned Munsiff shall complete the enquiry at the earliest and at any rate within three months of a copy of this judgment being placed before him. The parties will appear before the court below on 13.8.2007.

The Writ Petition is disposed of as above.

(PIUS C.KURIAKOSE, JUDGE)

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